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Sub-Commission on Prevention of
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of Minorities
Fiftieth session
Item 12 (c) (i) of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED

REVIEW OF ISSUES NOT PREVIOUSLY THE SUBJECT OF STUDIES BUT WHICH THE SUB-COMMISSION HAD DECIDED TO EXAMINE

IMPLICATIONS OF HUMANITARIAN ACTIVITIES FOR THE ENJOYMENT OF HUMAN RIGHTS

Written statement submitted by International Educational Development, Inc., a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 July 1998]

GE.98-13477 (E)

Sanctions and human rights

Introduction

1. On 28 August 1997 the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 1997/35 entitled "Adverse consequences of economic sanctions on the enjoyment of human rights", invoking the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and the Geneva Conventions of 1949 and their two Additional Protocols in expressing its concerns about sanctions. The resolution commits the Sub-Commission to addressing this question at its 1998 session.

2. The Sub-Commission's attention to sanctions is based in part on many statements made in its general debates and those of the United Nations Commission on Human Rights by Governments and non-governmental organizations, statements made by special rapporteurs, documents and reports by a number of United Nations specialized agencies, and on its own concerns about the humanitarian situation in Iraq as expressed in annual decisions since 1990.

3. International Educational Development/Humanitarian Law Project (IED/HLP) welcomes this initiative. To further the Sub-Commission's work we have prepared a memorandum analysing sanctions, blockades and embargoes in the light of human rights and humanitarian law and providing a description of all sanctions currently imposed and their adverse consequences. This statement summarizes that memorandum.

Sanctions and international law

4. The Charter of the United Nations has many provisions relevant to sanctions.* Sanctions could be a collective measure taken to prevent and remove threats to peace, to suppress acts of aggression or to bring about settlement of disputes as provided in Article 1, paragraph 1. Sanctions could also be a means of realizing friendly relations or international cooperation to solve international problems and to promote human rights. Imposition of sanctions by the United Nations falls under the authority of the Security Council as provided by Articles 41 and 42.

5. Limitations to sanctions are not set out in Articles 41 and 42, but other sections of the Charter clearly establish limitations. For example, Article 1, paragraph 1, requires that measures taken to maintain international peace and security must be "in conformity with the principles of justice and international law". In this sense, sanctions that are unjust or that constitute aggression may not be imposed. Likewise, sanctions that do not effectively help to maintain peace may also not be imposed.

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* Hereinafter, the term "sanctions" means also blockades and embargoes unless specifically distinguished.

6. Article 1, paragraph 2, limits sanctions by providing that all measures undertaken in the interest of friendly relations must be based on "respect for the principle of equal rights and the self-determination of peoples ...". Article 1, paragraph 3, necessarily limits sanctions by stating that one of the purposes of the United Nations is to promote and encourage respect for human rights. Article 1, paragraph 4, limits sanctions by requiring that United Nations action be in harmony with other United Nations or national action. Action cannot be taken if it results in unequal treatment of countries.

7. Article 55 of the Charter also limits sanctions in its requirement that United Nations actions may not lower economic standards, create health problems, or be in any way detrimental to the observance of human rights.

8. Article 52 of the Charter limits sanctions that may be imposed regionally or by a group or a single Government by mandating that regional arrangements and activities be in conformity with the "Purposes and Principles of the United Nations". A sanctions regime imposed unilaterally or by a regional body must conform to all requirements for such sanctions inherent in the Charter, including conformity with the principles of justice and international law.

9. A sanctions regime that on its face violates the Charter would have to be viewed as void ab initio for all States Members of the United Nations. Presumably, the States Members of the United Nations, individually and in concert with other Member States, would have to take relevant action, including censure of the regional body or Government(s) imposing such sanctions.

10. Treaty-based and customary humanitarian law also provides for limitations on sanctions. The Martens clause (eighth preambular paragraph of the Hague Convention of 1907) limits sanctions by citing the principles of civilized nations, the laws of humanity and the dictates of the public conscience. (The Martens clause is repeated in all four of the Geneva Conventions of 1949 and in Protocol Additional I.) Humanitarian law requires free passage of medical supplies and religious objects as well as protection of items indispensable to the survival of the civilian population. Sanctions may not be imposed that limit humanitarian goods or interfere with relief actions.

Remedies for sanctions regimes that violate international law

11. Any human rights body or other relevant body or specialized agency of the United Nations may inform the rest of the United Nations system and the international community as a whole that it views a particular sanctions regime to be in violation or at least causing undue hardships for the civilian population. Article 56 contains a pledge that members of the United Nations must take action to achieve the purposes established by Article 55. Accordingly, Member States alerted by human rights bodies, specialized agencies or non-governmental organizations that an actual or proposed sanctions regime would violate Article 55 must overtly object. If the sanctions regime is nevertheless imposed or continued, Member States must seek all available means to annul it, and may have the legal right to defy it. If

a United Nations official (including a special rapporteur of the Commission or members of the Sub-Commission) raises concerns about possible or actual violations of Article 55 or humanitarian law, the United Nations as a whole and individual Member States must investigate and eliminate all sanctions or parts of sanctions regimes that result in violations or undue suffering. Pressing issues of a humanitarian nature (food, shelter, medicine and medical care for victims) must be addressed and provided for.

12. The International Court of Justice is the final arbiter of whether a sanctions regime is in violation of the Charter or other norms of international law. A Member State or group of Member States that challenge a particular sanction may seek remedy in the relevant bodies such as the Sub-Commission, the Commission, the Economic and Social Council, the General Assembly or the Security Council. If in spite of express concerns the sanctions regime in question is not eliminated or modified, then the members of the Sub-Commission or member Governments of the Commission may seek an opinion from the International Court of Justice. The United Nations as a whole and the Security Council in particular must comply with such an opinion. A State that has sanctions imposed upon it may also challenge these sanctions at the International Court of Justice.

ANNEX

United Nations-imposed sanctions

Iraq - Economic sanctions under Security Council resolution 661 (1990), called the most comprehensive, rapidly applied sanctions regime in the history of the United Nations, provided for sanctions until the Iraqi Government withdrew from Kuwait. A comprehensive arms embargo was imposed by Security Council resolution 687 F to obtain a comprehensive prohibition against Iraq's possession of nuclear, chemical and biological weapons and ballistic missiles with a range greater than 150 km, and all related technology, materials and equipment. Serious concern has been raised by WHO, UNICEF, the Secretary-General and FAO/WFP about unreasonable denials of essential food and medicine under the sanctions regime. The Iraqi civilian population, especially children, are at grave risk due to extreme deprivation of food and medicine. It has been estimated that over 1 million children have died due to sanctions.

Liberia - An arms embargo was imposed in 1992 on all deliveries of weapons by Security Council resolution 788 (1992) due to the deteriorating situation of civil war. Security Council resolutions 1083 (1996) and 1116 (1997) stressed the obligation of all States to comply with the embargo.

Libyan Arab Jamahiriya - Diplomatic, air and arms embargo was imposed in 1992 by Security Council resolution 748 A (1992) for Libya's failure to comply with Security Council resolution 731 requesting the extradition of suspects in the air bombing of a Pan Am flight. Security Council resolution 883 (1993) freezes Libyan Government funds and bans the exportation of oil equipment to Libya. In 1997 formal requests were made by the Governments of Egypt, Kenya and Guinea-Bissau to eliminate the sanctions; the Department of Humanitarian Affairs was asked to investigate. Concerns about impact of sanctions on employment were raised by NGOs.

Sierra Leone - A petroleum and arms embargo and travel restrictions were imposed in October 1997 by Security Council resolution 1132 (1997) following sanctions imposed by the Economic Community of West African States (ECOWAS) against the military junta established after a coup d'état overthrew President Kabbah. Provisions were made for exemptions at the request of the democratically elected Government, the United Nations and humanitarian agencies. Security Council resolution 1171 (1998) extends the exemptions to the sale or supply of arms and related material to the Military Observer Group of the Economic Community of West African States (ECOMOG). Sanctions were lifted in June 1998 (Security Council resolution 1181) on restoration of the Kabbah Government.

Somalia - An arms embargo was imposed by Security Council resolution 733 (1992).

Sudan - Diplomatic sanctions were imposed by Security Council resolution 1054 (1996) for failure to comply with Security Council resolution 1044 (1996) requiring that suspects in the attempted assassination of President Mubarak of Egypt be extradited. A conditional air embargo authorized by Security Council resolution 1070 (1996) was deferred pending examination of the humanitarian effects.

Federal Republic of Yugoslavia - The Security Council re-established an arms embargo by its resolution 1160 (1998) in order to limit the conflict in Kosovo.

UNITA (Angola) - An arms and oil embargo was instituted against the National Union for the Total Independence of Angola (UNITA) by Security Council resolution 864 B (1993) for its failure to accede to United Nations-supervised elections of September 1992. Security Council resolution 1173 B (1998) imposes an international freeze of UNITA's financial assets and other economic sanctions. Provision is made for humanitarian exceptions.

Rwanda - An arms embargo instituted by Security Council resolution 918 B (1994) due to the internal conflict and massive human rights violations was lifted for the Rwandan Government in September 1996 (Security Council resolution 1011 (1996)), but remains in effect for non-government forces (such as the Army for the Liberation of Rwanda - ALIR).

Sanctions imposed by regional organizations or individual countries

Myanmar - Economic sanctions were imposed by the United States in 1996. Exceptions were provided for humanitarian assistance, anti-drug-trafficking assistance and promoting human rights and democratic values.

Burundi - Broad economic blockade sanctions have been imposed by the Governments of Zambia, the United Republic of Tanzania, Kenya, Uganda, Rwanda, Zaire and Ethiopia, Security Council resolution 1072 A (1996) expressed "strong support for the efforts of regional leaders". In April 1998 the International Crisis Group argued that the embargo had evolved into a "personal feud" with negative effects that had come to outweigh any positive effects it may have had. The policy risked hindering the process of internal dialogue, fuelling extremist elements in Burundi society and contributing to a dangerous destabilization of the situation. The Commission's Special Rapporteur warned of "disastrous effect on the general population of Burundi" (E/CN.4/1998/72, para. 80). The World Food Programme began an emergency food airlift in March 1998.

Cuba - A unilateral embargo by the United States has been in place since 1960, amended by the Helms-Burton Act and others, and widely criticized as being in violation of the Charter of the United Nations and human rights. General Assembly resolution 52/10 of 12 November 1997 called on States to repeal laws such as the Helms-Burton Act because of "their obligations under the Charter of the United Nations and international law, which, inter alia, reaffirm the freedom of trade and navigation". UNICEF claims the embargo adversely affects children (see A/52/342 and Add.1 and Corr.1).

Islamic Republic of Iran - Economic sanctions have been imposed by Western European countries and the United States. In 1996, the United States passed the Iran and Libya Sanctions Act allowing economic sanctions against foreign firms.

Libyan Arab Jamahiriya - An air blockade and additional economic sanctions have been imposed by Western European countries and the United States. United States law (Iran and Libya Sanctions Act 1996) allows for economic sanctions against foreign firms.

Federal Republic of Yugoslavia - In March 1998 a new investment ban was imposed against Yugoslavia, initiated by the Contact Group (United Kingdom, United States, Germany, Italy, France, Russian Federation) created to monitor the Dayton peace accord. A ban on Yugoslav airline flights in Europe was imposed by the European Union in June, 1998. United States financial sanctions were imposed in June, freezing the assets of the Federal Republic, blocking transactions and new investments.

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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED:

REVIEW OF ISSUES NOT PREVIOUSLY THE SUBJECT OF STUDIES BUT WHICH THE SUB-COMMISSION HAD DECIDED TO EXAMINE: INTERNATIONAL PEACE AND SECURITY AS AN ESSENTIAL CONDITION FOR THE ENJOYMENT OF HUMAN RIGHTS, ABOVE ALL THE RIGHT TO LIFE

Written statement submitted by International Educational Development, Inc., a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 July 1998]

GE.98-13452 (E)

Weapons, human rights and humanitarian law

1. At its forty-eighth session the Sub-Commission began a review of certain weapons, including weapons containing depleted uranium, and in resolution 1996/16 it requested the Secretary-General to submit a report containing information about these weapons. The Secretary-General's report (E/CN.4/Sub.2/1997/27 and Add.1) contained replies from a number of Governments and non-governmental organizations, raising serious questions about these weapons and human rights and humanitarian law norms. International Educational Development submitted our Memorandum on weapons and the laws and customs of war, IED/HLP (1997) to the Secretary-General, which he excerpted in paragraphs 17-41 of his report. 1/

2. The Sub-Commission has been concerned about arms and armaments for some time, 2/ and as a result of the quantity of material submitted to the Secretary-General, as well as the lack of attention in the United Nations bodies addressing arms control to human rights and humanitarian concerns, the Sub-Commission decided to go forward with a review of weapons, and in its resolution 1997/36 authorized Mrs. Clemencia Forero Ucros to prepare a working paper setting out how further study of this important topic might proceed. We are particularly pleased that the Sub-Commission, in its resolution 1997/37, authorized Mrs. Forero Ucros to include the topic of illicit transfer of arms in her working paper.

3. In our Memorandum we identify the four basic rules for weaponry under existing customary and treaty-based humanitarian law: (i) weapons must be able to be contained to legal military fields of action (the geographical requirement); (ii) weapons must be able to cease harming action when the armed conflict is over (the temporal requirement); (iii) weapons may not cause undue suffering (the humanitarian requirement); and (iv) weapons must not unduly harm the environment (the environmental requirement). We conclude that the use of most of the weapons listed in resolutions 1996/16 and 1997/36, especially weaponry containing depleted uranium, would constitute a per se violation of these requirements. We also conclude that production or threat of production, stockpiling and development of weapons whose use would constitute a per se violation of humanitarian law could be viewed as coercive, torture, a serious threat to peace, a threat to the right to self-determination and a threat to the right to life.

4. There is a compelling need to continue work in this area because certain countries, especially developed countries, continue development and stockpiling of more and more grotesque weaponry that could not legally be used. Additionally, they have huge stockpiles of weapons, including all weapons listed by the Sub-Commission, whose storage and containment are increasingly difficult. Developing countries also have considerable stockpiles of listed weapons, and are committing substantial amounts of their budgets for the development or purchase of such weapons. The arms race has resulted in further impoverishment of many of the world's peoples.

5. Developed countries condemn or applaud the presence of these weapons in the hands of developing countries in a biased way: each developed country supports its allies and condemns its enemies for the possession of the same weapons. Yet all development, stockpiling and use of these weapons should be

condemned. The developed countries should be especially criticized because they have created these weapons and now want to control who has them for political advantage rather than eliminate them.

6. Reliable information about these and similar weapons is difficult to obtain. Unfortunately, many Governments consider information about their weapons programmes to be classified or off limits to the general public, creating serious tension between rights under humanitarian and human rights law and so-called national security concerns. We believe that no State can use a national security defence to preclude investigation about weapons that are per se illegal. Further study of this issue should include discussion of permissible as well as impermissible national security concerns as they relate to the listed and similar weapons.

7. In resolution 1997/35 the Sub-Commission expressed the belief that efforts must be made to sensitize public opinion about these weapons. Public education about these weapons is vitally important. Further work by the Sub-Commission can only enhance public information and awareness, and so make the world safer for us all. More publicity about the weapons can also help in efforts to seek full disclosure from Governments.

8. International Educational Development/Humanitarian Law Project has maintained contact with many organizations that are involved with weaponry issues. We have collected materials from many groups as well as from individual researchers and medical people and have submitted them to Mrs. Forero Ucros. We have also met with the media and have generated news articles about these weapons and the Sub-Commission's work.

9. In our work publicizing the Sub-Commission's initiative, we have been amazed at how few people are aware of, for example, the use of weapons containing depleted uranium by United States forces in the Gulf war or about the residual effect of these weapons on the Iraqi civilian population. We have supported efforts to investigate this in Iraq, and have met with and collected information from medical doctors, nurses, medical researchers, media investigators and a wide range of equally concerned groups. We are convinced that a special focus needs to be brought to this situation, and are concerned that the continued sanctions against Iraq have played a significant part in suppressing information and enhancing disinformation about this weaponry and its devastating and continued effects. In this light, we applaud the concern of the Sub-Commission about the humanitarian situation in Iraq, which it has expressed in numerous decisions since 1990, the latest being decision 1997/119.

10. We are also concerned that the general public does not evince much understanding of existing humanitarian and human rights norms that relate to the weapons or the United Nations arms control programmes. Especially distressing is that many organizations working on weapons control were unaware of the existence of the Sub-Commission when we first contacted them.

11. We support this initiative as well as other efforts of the United Nations in the field of human rights. We are convinced that full development of this topic in a comprehensive study will not only be regarded as a key turning point in arms control and disarmament work but will ensure

the continued participation of a wide range of grass-roots, national and international organizations in the ongoing work of the United Nations human rights bodies. For this reason, we most strongly urge the Sub-Commission to approve the appointment of Mrs. Forero Ucros as Special Rapporteur for a full study of weaponry in the light of humanitarian and human rights law. The study should include the issues of development, production, stockpiling, trafficking and use or threat of use of all the weapons listed in the Sub-Commission's resolutions as well as contemplated weapons and their development as they become known.

Notes

1/ Additional excerpts of the Memorandum are found in document E/CN.4/Sub.2/1997/NGO/19.

2/ In 1992, for example, the Sub-Commission, in its resolution 1992/39, expressed concern about arms production and trade and human rights.

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FREEDOM OF MOVEMENT

Written statement submitted by the Open Society Institute, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 July 1998]

GE.98-13496 (E)

Introduction

1. The Forced Migration Projects of the Open Society Institute seek to prevent or ameliorate causes of forced displacement, to protect and assist refugees and displaced persons, and to provide durable solutions to those seeking to re-establish their lives. Activities focus on the former Soviet Union, the former Yugoslavia, and certain countries in the Americas.

Former Soviet Union

2. Population displacement remains one of the main problems of the former Soviet Union as armed conflicts and systematic human rights violations continue to affect the region. To alleviate such problems, the forced Migration Projects have advocated several initiatives. In particular, the 1996 Commonwealth of Independent States (CIS) conference on migration-related issues should be reconceived and reinvigorated. Inspired by the consequences of the dislocation of some 9 million people after the breakup of the Soviet Union in 1991, the International Organization for Migration, the Organization for Security and Cooperation in Europe, and the Office of the United Nations High Commissioner for Refugees organized the 1996 conference. Although the CIS conference process has had accomplishments, a new approach is needed to implement the plans promulgated in 1996.

3. Genuine progress in these areas would require a concerted effort by Governments, intergovernmental assemblages, international institutions and non-governmental actors to address a wide array of issues pertaining to financial infrastructure, sustainable development and human rights. These efforts would also include the international and regional lending institutions as well as a variety of international entities involved in physical and human development which should be equal partners in conference follow-up activities. Benchmarks should be established, to allow donor countries to assess the productive use of pledged funds, or to indicate the need to impose appropriate measures of conditionality.

4. Additionally, the work of NGOs in the region should be strengthened. Among the many benefits of NGOs are contributions to support for democratic institutions, social stability and the rule of law. Encouraging the emergence of a network of NGOs in the former Soviet Union could help avert the causes and ameliorate the consequences of forced migration. The 1996 CIS conference Working Group on NGO Legislation, which is led by the Forced Migration Projects, has endeavoured to formulate realistic objectives to reinvigorate the emergence of a vibrant NGO regional network. The Working Group's main goals are: to foster greater government awareness of the potential benefits of a strong independent sector, to enunciate improved registration and tax law proposals, and to promote increased dialogue between NGOs and CIS Governments.

5. To this end, tax and registration laws must be reformed in order to facilitate the work of NGOs. Many laws throughout the region hinder the formation and operation of NGOs. Despite the international recognition given to the right to freedom of association, most CIS States require NGOs to register with the Government to become a "legal person" or "legal entity". Those laws do not clearly define the legal status of an unregistered NGO or make clear the conditions under which a public organization may operate.

6. Taxation policies must also be revised. At present, tax laws in CIS countries are often confusing, even contradictory. There are very few reduced rates or exemptions for non-profit organizations. Special tax statuses are frequently based not on the distinctive nature of NGOs, but on organizational purposes, the source or use of funds, and are even sometimes designated for specific organizations. Tax benefits are likely to be given to Government-supported associations whose public benefit, form and purpose may resemble those of independent NGOs but which are not truly independent NGOs. Such tax and registration laws must be amended to facilitate the work of NGOs.

Former Yugoslavia

7. Regional and subregional arrangements on citizenship and property rights are required to promote the voluntary return of refugees and displaced persons after the conflict in the former Yugoslavia. Indeed, the breakup of Yugoslavia dispersed its citizens over different States, both within and outside old borders, making a comprehensive regional approach necessary. Although comparatively peaceful conditions currently prevail in the region, wartime property laws, non-implementation of revised property laws, and inadequately addressed issues of citizenship remain key obstacles to safe repatriation. Wartime property laws hinder the return of those who fled by favouring current occupants of real property. Citizenship laws have left certain groups stateless as successor States cannot agree on formulas that extend citizenship status to all citizens of the former Yugoslavia.

8. It is vital that the international community play an active role in overseeing the establishment of regional and sub-regional arrangements that promote fair and adequate laws on property and citizenship rights. A model agreement on citizenship law proposed by the Forced Migration Projects may provide a useful device for dialogue on these issues.

The Americas

9. The region of Central America and the Caribbean is at present relatively peaceful. The underlying causes of the previous upheavals, however, are still manifestly present in the area. The current calm provides us with the right opportunity to implement measures that would prevent or reduce the hardships associated with population displacement.

10. In particular, multilateral cooperation would improve responses to crises, especially if it incorporates burden-sharing among States and active engagement by international organizations and NGOs. A planning institute at the political level could facilitate effective and humane management of migration and refugee emergencies and prevent such humanitarian disasters. The Forced Migration Projects have advocated the establishment of such an institute which should coordinate with the work of UNHCR.

Conclusion

11. The international community occupies a pivotal position in the fight to avoid or alleviate the plight of refugees and displaced persons in the regions in which we work. We urge a renewal of commitment and attention to achieve these critical objectives.